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**In the Supreme Court of the United States**

**No. 296.**

**OCTOBER TERM, 1944.**

PANHANDLE EASTERN PIPE LINE COMPANY,  
ILLINOIS NATURAL GAS COMPANY, and  
MICHIGAN GAS TRANSMISSION CORPORATION,

*Petitioners,*

vs.

FEDERAL POWER COMMISSION,  
CITY OF DETROIT,  
COUNTY OF WAYNE, MICH.,  
MICHIGAN CONSOLIDATED GAS COMPANY, and  
MICHIGAN PUBLIC SERVICE COMMISSION,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

**BRIEF OF THE CITY OF CLEVELAND, OHIO,  
AMICUS CURIAE, SUGGESTING THAT THE  
COURT BELOW WAS WITHOUT JURISDIC-  
TION OVER THE SUBJECT MATTER.**

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COURT BELOW WAS WITHOUT JURISDIC-  
TION OVER THE SUBJECT MATTER.**

This brief of the City of Cleveland,<sup>1</sup> a political sub-  
division of the State of Ohio, suggesting that the court  
below was without jurisdiction over the subject matter of

<sup>1</sup> The City of Cleveland, Ohio, is the largest city served by  
The East Ohio Gas Company, which, since January 1, 1944, has  
been and is the second largest customer of the Panhandle East-  
ern Pipe Line Company. Cleveland, like all the State and local  
parties representing the interests of ultimate consumers in this  
case, is in the Sixth Circuit.

the petition for review, is presented *amicus curiae*, without consent of the parties, under Rule 27, paragraph 9, of the Rules of the Supreme Court (306 U. S. 708-709).

The City of Cleveland respectfully suggests that the questions upon the merits which the petition for a writ of certiorari seeks to raise are not presented for review by the Supreme Court of the United States for the reason that the United States Circuit Court of Appeals for the Eighth Circuit was without jurisdiction over the subject matter of the controversy.

This Court will investigate and determine on its own motion whether the United States Circuit Court of Appeals for the Eighth Circuit had jurisdiction over the subject matter, even though that question was not raised by counsel for any of the parties in the court below, and this Court will not review on certiorari or otherwise the merits of a controversy over which the lower court was without jurisdiction. *Shanferoke Corporation v. Westchester Corporation*, 293 U. S. 449, 451; *Stratton v. St. Louis-Southwestern Railway Company*, 282 U. S. 10, 18; *M. C. and L. M. Railway Company v. Swar*, 411 U. S. 379, 382-384.

### OPINIONS BELOW.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit (R. XVI, 7198) filed June 6, 1944, is now officially reported in 143 F. (2d) 488. The opinion of the Federal Power Commission entered September 23, 1942 (R. I, 14) is reported in 45 P. U. R. (N. S.) 203.

### JURISDICTION.

Jurisdiction of this Court is invoked by the petitioners under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 19(b) of the Natural Gas Act. (Pet. for Cert., p. 2.)

Application for rehearing was denied by the Federal Power Commission on October 30, 1942. (R. XVI, 7150.)

The petition for review was filed with the United States Circuit Court of Appeals for the Eighth Circuit on the 18th day of November, 1942. (R. I, 44.)

The decree of the United States Circuit Court of Appeals for the Eighth Circuit was entered on June 6, 1944. (R. XVI, 7226.)

The Petition for Certiorari alleges that the United States Circuit Court of Appeals for the Eighth Circuit was the jurisdiction in which "petitioners had their principal place of business." (Pet. for Cert., p. 3.)

The Petition for Review filed with the Circuit Court of Appeals for the Eighth Circuit alleged that, "each of petitioners has its principal place of business in Kansas City, Jackson County, Missouri within the jurisdiction of the Eighth Circuit Court of Appeals." (R. I, 6.)

Said allegation of the Petition for Review is contradicted by the record, which shows upon its face that none of the petitioners had its "principal place of business" within the jurisdiction of the United States Circuit Court of Appeals for the Eighth Circuit.

#### **STATUTE INVOLVED.**

The statute involved is the Natural Gas Act (52 Stat. 821; 15 U. S. C. 717), and particularly Section 19(b) thereof, which provides:

"(b). *Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the*

Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 346 and 347 of Title 28, as amended." (15 U. S. C. A. 717(b).)

#### QUESTION PRESENTED.

The primary question presented is whether the United States Circuit Court of Appeals for the Eighth Circuit had jurisdiction over the subject matter of the Petition for Review.

## STATEMENT.

The order issued by the Federal Power Commission in this proceeding relates to three natural gas companies, namely, Illinois Natural Gas Company, Michigan Gas Transmission Corporation, and Panhandle Eastern Pipe Line Company. (R. I, 38, 42.) The Commission found that each of said corporations is a "natural gas company" within the purview of the Natural Gas Act. (R. I, 38-40.) The Natural Gas Act defines a "natural gas company" as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." (Natural Gas Act, Sec. 2, par. (6).) The Commission did *not* find that all of said corporations together constitute a single "natural gas company" within the meaning of the Natural Gas Act.

Panhandle Eastern owned all the stock of both Michigan Gas and Illinois Natural. (R. I, 18, 40.) For rate-making purposes, the parties agreed that the corporate entities might be disregarded. (R. I, 18.) But for jurisdictional purposes, both the Federal Power Commission and the petitioners treated Illinois Natural, Michigan Gas and Panhandle Eastern as separate corporate entities, each owning its own lines and each operating its own lines. (R. I, 6, 17, 38-40, 42.) The Commission made its order against three natural gas companies. And the petition for review was filed on behalf of three natural gas companies. Each of petitioners had its own contracts with customers and each of petitioners had its own rate schedules on file with the Federal Power Commission under the Natural Gas Act. (R. IX, 4306, 4307-4309.) After the acquisition of all the stock of Michigan Gas by Panhandle Eastern, Commission counsel stated on the record (C. C. A. S. typewritten transcript, p. 7988; omitted from printed record, R. VI, 2833):

"Michigan Gas Transmission Corporation was a corporate entity before and is a corporate entity after this sale of its securities to Panhandle Eastern. It is

still Michigan Gas Transmission Corporation. It still owns and operates this line. The mere fact that its common stock has changed from the hands of one holding company to the hands of another company is wholly immaterial so far as Michigan Gas Transmission is concerned \* \* \*. This is not a merger, this is not a consolidation, we are still dealing with Michigan Gas Transmission at the same old stand, they still own the lines and they still operate the lines."

The record does not show any acquisition by Panhandle Eastern of the properties of Michigan Gas or Illinois Natural. Nor does the record show any merger or consolidation of Panhandle Eastern, Illinois Natural, and Michigan Gas. There was no such acquisition of properties, consolidation or merger, at the time the petition for review was filed in the court below. Nor was there any such acquisition of properties, consolidation or merger within sixty days after the Federal Power Commission's denial of petitioners' application for rehearing. If there was any such acquisition of properties, merger, or consolidation, as the petition for certiorari goes outside the record to assert (Pet. for Cert., p. 4, note 1), it took place some time in 1943, and is immaterial for jurisdictional purposes.

The Petition for Review invoked the jurisdiction of the United States Circuit Court of Appeals for the Eighth Circuit solely under the clause of Section 19(b) of the Natural Gas Act which conditions jurisdiction upon that being the "circuit wherein the natural gas company to which the order relates \* \* \* has its principal place of business." (R. I. 6.)

Petitioners did not claim that the Eighth Circuit was a circuit "wherein the natural gas company to which the order relates is located," nor could they have done so. The Petition for Review admits that Illinois Natural is an Illinois corporation, that Michigan Gas is a Delaware corporation, and that Panhandle Eastern is a Delaware corporation. (R. I. 6.) Illinois Natural was therefore located in

the Seventh Circuit and Michigan Gas and Panhandle Eastern were therefore located in the Third Circuit. The Eighth Circuit is not a circuit "wherein the natural gas company to which the order relates is located." *Colorado Interstate Gas Company v. Federal Power Commission*, 142 F. (2d) 943, 950 (C. C. A. 10).

The Petition for Review merely alleged that "each of petitioners has its principal place of business in Kansas City, Jackson County, Missouri, within the jurisdiction of the Eighth Circuit Court of Appeals." (R. I, 6.)

The allegation of the Petition for Review that "each of petitioners has its principal place of business in Kansas City, Jackson County, Missouri, within the jurisdiction of the Eighth Circuit Court of Appeals" is contradicted by the record.

In fact, the record shows that none of the natural gas companies to which the Federal Power Commission's order relates had its "principal place of business" within the jurisdiction of the United States Circuit Court of Appeals for the Eighth Circuit.

The allegation of the Petition for Review that Illinois Natural Gas Company,<sup>1</sup> one of the natural gas companies to which the Federal Power Commission's order relates, "has its principal place of business in Kansas City, Jackson County, Missouri, within the jurisdiction of the Eighth Circuit Court of Appeals" is contradicted by the record. The Petition for Review alleged and the Commission found that Illinois Natural was a "natural gas company."

(R. I, 6, 40.) The Commission found that Illinois Natural was engaged in the sale in interstate commerce of natural gas transported in interstate commerce (R. I, 39.) The record shows that the situs of the operations of Illinois

<sup>1</sup> This is the same Illinois Natural Gas Company which was recently a party to a case before this Court, *Illinois Natural Gas Company v. Central Illinois Public Service Company*, 314 U. S. 498 (1942).

Natural was wholly within the State of Illinois, which is in the Seventh Circuit. (R. XVI, 7089.) Illinois Natural owned 261 miles of pipe lines located wholly within the State of Illinois in the Seventh Circuit. (R. I, 18, 124; R. IX, 4101.) Illinois Natural was engaged in the business of selling natural gas in interstate commerce for resale solely to customers within the State of Illinois in the Seventh Circuit. (R. X, 5885; R. IX, 4095.) Illinois Natural transported natural gas in interstate commerce solely through said 261 miles of pipe lines located wholly within the State of Illinois in the Seventh Circuit. (R. I, 18.) Illinois Natural had no physical properties within the Eighth Circuit, transported no natural gas within the Eighth Circuit, sold no natural gas within the Eighth Circuit, had no natural gas customers within the Eighth Circuit, received no revenues from sales of natural gas within the Eighth Circuit. Even if the petition for review be construed as alleging that Illinois Natural had its principal executive office at Kansas City, Missouri, in the Eighth Circuit, the record plainly contradicts the allegation of the petition for review that Illinois Natural had its "principal place of business" in the Eighth Circuit.

The allegation of the petition for review that Michigan Gas Transmission Corporation, one of the natural gas companies to which the Federal Power Commission's order relates, "has its principal place of business in Kansas City, Jackson County, Missouri, within the jurisdiction of the Eighth Circuit Court of Appeals" is contradicted by the record. The petition for review alleged and the Commission found that Michigan Gas was a "natural gas company." (R. I, 6, 39.) The record shows that the situs of the operation of Michigan gas was partly within the State of Indiana, which is in the Seventh Circuit and partly within the states of Michigan and Ohio, which are in the Sixth Circuit. (R. XIII, 5885; R. X, 4757, *et seq.*) Michigan Gas owned approximately 496 miles of pipe lines located partly

within the State of Indiana, which is in the Seventh Circuit, and partly within the States of Michigan and Ohio, which are in the Sixth Circuit. (R. I, 39; R. XIII, 5885; R. X, 4757-4761.) Michigan Gas was engaged in the business of selling natural gas in interstate commerce transported in interstate commerce to various customers in Indiana, and in transporting natural gas in interstate commerce wholly within the states of Ohio, Indiana and Michigan for the account of Panhandle Eastern to various distributing companies which served forty communities in Ohio and Michigan, including the City of Detroit. (R. X, 4757.) Michigan Gas had no physical properties within the Eighth Circuit; transported no natural gas within the Eighth Circuit, sold no natural gas to customers within the Eighth Circuit, received no revenues from sales of natural gas within the Eighth Circuit. Michigan Gas had offices in Detroit, Michigan. (R. II, 579.) Even if the petition for review be construed as alleging that Michigan Gas had its principal executive office at Kansas City, Missouri, in the Eighth Circuit, the record plainly contradicts the allegation of the petition for review that Illinois Natural had its "principal place of business" in the Eighth Circuit.

The allegation of the petition for review that Panhandle Eastern Pipe Line Company, one of the natural gas companies to which the Federal Power Commission's order relates, "has its principal place of business in Kansas City, Jackson County, Missouri, within the jurisdiction of the Eighth Circuit Court of Appeals" is contradicted by the record. The petition for review alleged and the Commission found that Panhandle Eastern is a "natural gas company" within the meaning of the Natural Gas Act. (R. I, 6, 38.) The record shows that Panhandle Eastern owned producing wells in Texas in the Fifth Circuit and Kansas in the Tenth Circuit (R. I, 105), owned a main transmission line beginning in Texas in the Fifth Circuit, crossing Oklahoma and Kansas in the Tenth Circuit, Mis-

souri in the Eighth Circuit, Illinois in the Seventh Circuit, and ending at Dana, Indiana, in the Seventh Circuit. (R. I, 32; R. XII, 5885.) Panhandle Eastern was engaged in the business of selling in interstate commerce natural gas transported in interstate commerce. (R. I, 18, 39.) Michigan Gas and Illinois Natural purchased the entire supplies of gas which they respectively transported and sold from Panhandle Eastern. (R. I, 18; R. X, 4757.) The record shows that in 1941 Panhandle Eastern delivered into the Seventh Circuit to Michigan Gas and Illinois Natural over 80 per cent of the gas which it sold (R. XI, 5059), and that the sales of Panhandle Eastern were principally in the Sixth and Seventh Circuits, the Michigan Consolidated Gas Company, which serves the city of Detroit in the Sixth Circuit being by far its largest customer. (R. XI, 5059, 5057.) The record shows that in 1941 Panhandle Eastern delivered only about 15 per cent of the gas which it sold into the State of Missouri in the Eighth Circuit. (R. XI, 5059.) Panhandle Eastern had no large customer for resale in the Eighth Circuit. (R. IX, 4091.) The record shows that in 1941, Panhandle Eastern received nearly all of its gas revenues from sales in the Sixth and Seventh Circuits and only a minor and incidental percentage from the Eighth Circuit. (R. XII, 5461.) Panhandle Eastern had two offices which it called "principal executive offices," one at 90 Broad Street, New York, New York, in the Second Circuit, and one at 1221 Baltimore Avenue, Kansas City, Missouri, in the Eighth Circuit. (R. XI, 5051.) Even if the petition for review be construed as alleging that Panhandle Eastern had its principal executive office at Kansas City, Missouri, in the Eighth Circuit, the record plainly contradicts the allegation of the petition for review, that Panhandle Eastern had its principal place of business in the Eighth Circuit.

Upon these facts, the City of Cleveland suggests that the United States Circuit Court of Appeals for the Eighth Circuit was without jurisdiction over the subject matter.

## A R G U M E N T.

**THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT WAS WITHOUT  
JURISDICTION OVER THE SUBJECT MATTER  
OF THE CONTROVERSY.**

### I.

**CONGRESS HAS AUTHORIZED THE EIGHTH CIRCUIT TO  
REVIEW ORDERS OF THE FEDERAL POWER COM-  
MISSION UNDER THE NATURAL GAS ACT ONLY  
UPON CONDITION, AND ABSENT THE CONDITION  
STIPULATED BY CONGRESS, THE EIGHTH CIRCUIT  
WAS WITHOUT JURISDICTION OVER THE SUBJECT  
MATTER.**

Congress has authorized the Eighth Circuit to review orders of the Federal Power Commission under the Natural Gas Act only upon condition,

The pertinent part of Section 19(b) of the Natural Gas Act (52 Stat. 831; 15 U. S. C. A. Sec. 717r(b)) provides:

“(b) Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part \* \* \*.”

Congress obviously has not conferred general jurisdiction upon all circuit courts of appeals as a class to review Federal Power Commission orders under the Natural Gas Act. Nor has the Congress conferred jurisdiction upon the Eighth Circuit in particular to hear all reviews of this class.

On the contrary, the statute manifestly confers jurisdiction in particular to review all orders of the Federal Power Commission under the Natural Gas Act solely upon the United States Court of Appeals for the District of Columbia.

As to circuit courts of appeals, other than the United States Court of Appeals for the District of Columbia, Congress has conditioned the special grant of power to review orders of the Federal Power Commission under the Natural Gas Act upon the existence of one of two alternative circumstances.

Jurisdiction of the Eighth Circuit, for example, to review orders of the Federal Power Commission under the Natural Gas Act is expressly conditioned upon that circuit's being either (1) the "circuit wherein the natural-gas company to which the order relates is located" or (2) the "circuit wherein the natural-gas company to which the order relates . . . has its principal place of business."

In other words, Congress has conferred jurisdiction to hear and determine the controversy upon the Eighth Circuit only in a given set of circumstances.

If neither of the circumstances is present upon which this extraordinary grant of original jurisdiction to review orders of the Federal Power Commission under the Natural Gas Act is conditioned, the Eighth Circuit lacks jurisdiction over the subject matter. *In the Matter of the Petition of National Labor Relations Board*, 304 U. S. 486, 494.

A suit against the Federal Power Commission, an agency of the United States, is a suit against the United States, and courts may not go beyond the statutory letter of the consent to be sued or permit suit except in the courts and upon the terms permitted by the Congress: *Okin v. S. E. C.*, 46 F. Supp. 481, 482 (D. C., S. D. New York) (1942); *Schillinger v. U. S.*, 155 U. S. 163, 166; *S. E. C. v. Andrews*, 88 F. (2d) 441 (C. C. A. 2) (1937); *Illinois Cen-*

*tral v. P. U. C.*, 245 U. S. 493, 504; *Kennedy v. P. W.* 4., 23 F. Supp. 771, 773 (D. C., N. D., New York) (1938).

*A fortiori*, in a suit against an agency of the United States, counsel for the federal agency can not by waiver or consent enlarge the consent of Congress so as to permit suit against the United States in other courts or upon other terms than those permitted by the Congress. *Finn v. U. S.*; 123 U. S. 227, 233; *Minnesota v. United States*, 305 U. S. 382, 388-389; *United States v. Shaw*, 309 U. S. 495, 501.

In this case, if the Eighth Circuit was not the "circuit wherein the natural-gas company to which the order relates . . . has its principal place of business," the Eighth Circuit was wholly without jurisdiction over the subject matter.

## II.

**THE EIGHTH CIRCUIT WAS WITHOUT JURISDICTION OVER THE SUBJECT MATTER FOR THE REASON THAT PETITIONERS DID NOT SATISFY THE SOLE CONDITION UPON WHICH CONGRESS CONSENTED TO SUIT AGAINST THE UNITED STATES IN THE EIGHTH CIRCUIT.**

*A. None of the three natural gas companies to which the Federal Power Commission's order relates had its "principal place of business" within the Eighth Circuit.*

Congress has consented to suit against the United States within the Eighth Circuit in this case only if that is the "circuit wherein the natural-gas company to which the order relates . . . has its principal place of business." (Natural Gas Act, Sec. 19(b).)

In *Colorado Interstate Gas Company v. Federal Power Commission*, 142 F. (2d) 943, 951 (C. C. A. 10) (1944) (Bratton, Circuit Judge), the court construed this language of Section 19(b) as follows:

" . . . No doubt mature considerations of convenience gave rise to the deliberate care with which Con-

gress, in the exercise of its discretion, authorized review in the circuit within which the principal business of the company is conducted. And the principal place of business is where the actual business of the corporation is conducted or transacted. It is a question of fact to be determined in each particular case by taking into consideration such factors as the character of the corporation, its purposes, the kind of business in which it is engaged, and the situs of its operations. Cf. *In re Guanacavi Tunnel Co.*, 2 Cir., 201 F. 316; *In re Hudson River Nav. Corp.*, *supra*; *Chicago Bank of Commerce v. Carter*, 8 Cir., 61 F. 2d 986."

Was the Eighth Circuit the circuit wherein Illinois Natural Gas Company had its "principal place of business"? The business of Illinois Natural was the furnishing of gas to customers in the Seventh Circuit for ultimate public consumption in the Seventh Circuit. The pipe lines of Illinois Natural were located wholly within the Seventh Circuit. All the gas which Illinois Natural sold was delivered into the Seventh Circuit. All the revenues which Illinois Natural received came from the Seventh Circuit. Illinois Natural sold no gas in the Eighth Circuit for ultimate public consumption in the Eighth Circuit, had no pipe lines in the Eighth Circuit, transported no gas within the Eighth Circuit, and received no revenues from sales or transportation within the Eighth Circuit. The unsupported allegation of the petition for review filed in the Eighth Circuit that Illinois Natural had its "principal place of business" in the Eighth Circuit is contradicted by the record.

Was the Eighth Circuit the circuit wherein Michigan Gas Transmission Corporation had its "principal place of business"? The business of Michigan Gas was the furnishing of natural gas to customers in the Sixth and Seventh Circuits for ultimate public consumption in the Sixth and Seventh Circuits. The pipe lines of Michigan Gas were located wholly within the Sixth and Seventh Circuits. All the gas transported and sold by Michigan Gas was trans-

ported and sold within the Sixth and Seventh Circuits. All the revenues which Michigan Gas received came from the Sixth and Seventh Circuits. Michigan Gas transported no gas in the Eighth Circuit, delivered no gas into the Eighth Circuit, sold no gas in the Eighth Circuit, received no revenues from the Eighth Circuit, had no pipe lines in the Eighth Circuit. Between the easternmost boundary of the Eighth Circuit at the Missouri line and the westernmost point to which the lines of Michigan Gas extended, lies the entire width of the State of Illinois. The unsupported allegation of the petition for review that Michigan Gas had its "principal place of business" in the Eighth Circuit is manifestly contradicted by the record.

Was the Eighth Circuit the circuit wherein Panhandle Eastern Pipe Line Company had its "principal place of business"? The principal business of Panhandle Eastern Pipe Line Company was the delivery of gas into the Seventh Circuit to Illinois Natural and Michigan Gas for ultimate public consumption in the Sixth and Seventh Circuits. Nearly all the gas which Panhandle Eastern sold was delivered into the Seventh Circuit. Nearly all the revenues which Panhandle Eastern received came from the Sixth and Seventh Circuits. Panhandle Eastern sold only minor and incidental quantities of gas in the Eighth Circuit for ultimate public consumption in the Eighth Circuit and received only a minor and incidental part of its revenues from gas furnished to customers within the Eighth Circuit. The unsupported allegation of the petition for review filed in the Eighth Circuit that Panhandle Eastern had its "principal place of business" in the Eighth Circuit is manifestly contradicted by the record.

The words "principal place of business" as used in the Natural Gas Act and other federal statutes relating to jurisdiction of the lower federal courts, do not mean "principal office" or "principal executive office." *Caceres v. United States Shipping Board Emergency Fleet Corporation*, 299 Fed. 968, 970-971; *Dryden v. Ranger Refining*

*Company*, 280 Fed. 257, 259, cert. den. 260 U. S. 726; *Roszell Bros. v. Continental Coal Corp.*, 235 Fed. 343, 356-357, aff'd 242 Fed. 243, 246; *In re Thigarts River Coal Co.*, 203 Fed. 178, 179-180; *Watters v. Hamilton Gas Company*, 10 F. Supp. 323, 326; *Colorado Interstate Gas Company v. Federal Power Commission*, 142 F. (2d) 943, 951.

The allegation of the petition for review that "each of petitioners has its principal place of business in Kansas City, Jackson County, Missouri, within the jurisdiction of the Eighth Circuit Court of Appeals" is upon this record merely a mistaken conclusion. See *Toraway Hotel Company v. Smathers*, 216 U. S. 439, 448.

It is respectfully submitted that none of the three natural gas companies to which the Federal Power Commission's order relates had its "principal place of business" within the Eighth Circuit.

*B. Even if but one of the three natural gas companies to which the Federal Power Commission's order relates did not have its "principal place of business" within the Eighth Circuit, the Eighth Circuit did not have jurisdiction over the subject matter.*

Congress has consented to suits against the United States in the Eighth Circuit only if that is the "circuit wherein the natural gas company to which the order relates . . . has its principal place of business." (Natural Gas Act, Sec. 19(b).) Congress has not consented to suit against the United States in the circuit wherein *any* natural gas company to which the order relates has its principal place of business. Congress has not consented to suit against the United States in the Circuit wherein *some* of the natural gas companies to which the order relates have their principal places of business. If the Federal Power Commission's order relates to more than one natural gas company, Congress has consented to suit against the United States in a circuit other than the District of Columbia only if it is the circuit wherein each of the natural gas companies

to which the order relates is located or has its principal place of business. If a Federal Power Commission order relates to more than one natural gas company, and the natural gas companies to which the order relates have their principal places of business in different circuits and are located in different circuits, Congress has consented to suit against the United States only in the United States Court of Appeals for the District of Columbia.

Even if but one of the three natural gas companies to which the Federal Power Commission's order relates in this case did not have its "principal place of business" within the Eighth Circuit, the United States Court of Appeals for the District of Columbia had exclusive jurisdiction and the Eighth Circuit had no jurisdiction over the subject matter.

In short, Congress has authorized the Eighth Circuit to review orders of the Federal Power Commission under the Natural Gas Act only upon condition, and absent the condition stipulated by Congress, the Eighth Circuit was without jurisdiction over the subject matter. None of the three natural gas companies to which the Federal Power Commission's order relates had its "principal place of business" within the Eighth Circuit. Even if but one of the three natural gas companies to which the Federal Power Commission's order relates did not have its "principal place of business" within the Eighth Circuit, the Eighth Circuit did not have jurisdiction over the subject matter. The Eighth Circuit was without jurisdiction over the subject matter for the reason that petitioners did not satisfy the sole condition upon which Congress consented to suit against the United States in the Eighth Circuit.

### **SUMMARY OF ARGUMENT.**

The United States Circuit Court of Appeals for the Eighth Circuit was without jurisdiction over the subject matter of the controversy.

The Federal Power Commission is an agency of the United States.

A statutory proceeding to review an order of the Federal Power Commission is a suit against the United States.

Congress has consented to suits against the United States under the Natural Gas Act only upon certain terms and conditions.

Courts may not go beyond the statutory letter of the consent to be sued, or permit suit against the United States except in the courts and upon the terms permitted by the Congress.

In a suit against an agency of the United States, counsel for the federal agency can not by his action or inaction enlarge the consent of Congress so as to permit suit against the United States in other courts or upon other terms than those permitted by the Congress.

Under the Natural Gas Act, Congress has unconditionally consented to suits against the United States only in the United States Court of Appeals for the District of Columbia.

Under the Natural Gas Act, Congress has conditionally consented to suits against the United States in other circuits only if the circuit is either (1) the "circuit wherein the natural-gas company to which the order relates is located" or (2) the "circuit wherein the natural-gas company to which the order relates . . . has its principal place of business."

Under the Natural Gas Act, where, as here, the Federal Power Commission's order relates to more than one natural-gas company, suits against the United States may be brought in a circuit other than the District of Columbia only if it is the circuit wherein each of the natural-gas companies to which the order relates is located or has its principal place of business.

In the instant case, the Federal Power Commission's order relates to three natural gas companies.

In the instant case, none of the three natural-gas companies to which the Federal Power Commission's order relates was located in the Eighth Circuit.

In the instant case, if but one of the three natural-gas companies to which the Federal Power Commission's order relates did not have its principal place of business in the Eighth Circuit, jurisdiction of the Eighth Circuit is defeated.

In the instant case, none of the three natural-gas companies to which the Federal Power Commission's order relates had its principal place of business in the Eighth Circuit.

It is respectfully submitted that the United States Circuit Court of Appeals for the Eighth Circuit was without jurisdiction over the subject matter of the controversy.

### CONCLUSION.

The City of Cleveland respectfully suggests that the questions upon the merits set up in the Petition for a Writ of Certiorari are not presented for review by the Supreme Court of the United States for the reason that the United States Circuit Court of Appeals for the Eighth Circuit was without jurisdiction over the subject matter of the controversy.

Respectfully submitted,

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